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8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
10 **SAN FRANCISCO DIVISION**

11 IN RE: CATHODE RAY TUBE (CRT)
12 ANTITRUST LITIGATION

MASTER FILE NO. 07-cv-5944 SC
MDL NO. 1917

13 This Document Relates To:

14 Case No. 2011-CV-6205 SC

15 STATE OF FLORIDA,
16 OFFICE OF THE ATTORNEY GENERAL,
DEPARTMENT OF LEGAL AFFAIRS,

17 Plaintiff,

18 v.

19 LG ELECTRONICS, INC., et al.,

20 Defendants.

**[PROPOSED] ORDER DENYING
DEFENDANTS' MOTION TO DISMISS
THE STATE OF FLORIDA'S
COMPLAINT**

Judge: Hon. Samuel Conti

Special Master: Hon. Charles A. Legge (Ret.)

1 The Motion to Dismiss the State of Florida’s Complaint (“Motion”), filed by
2 Defendants Hitachi, Ltd., Hitachi Displays, Ltd. (n/k/a Japan Display East, Inc.), Hitachi Asia,
3 Ltd., Hitachi America, Ltd., Hitachi Electronic Devices (USA), Inc., Koninklijke Philips
4 Electronics N.V., Philips Electronics North America Corporation, Panasonic Corporation (f/k/a
5 Matsushita Electric Industrial Co., Ltd.), Panasonic Corporation of North America, MT Picture
6 Display Co., Ltd., LG Electronics, Inc., LG, LG Electronics USA, Inc., Samsung SDI America,
7 Inc., Samsung SDI Co., Ltd., Samsung SDI (Malaysia) SDN, BHD., Samsung SDI Mexico S.A.
8 DE C.V., Samsung SDI Brasil Ltda., Shenzhen Samsung SDI Co., Ltd., Tianjin Samsung SDI
9 Co., Ltd., Toshiba Corporation, and Toshiba America Electronic Components, Inc. (hereinafter,
10 “Defendants”) came on for hearing before this Court.
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13 Having considered all papers filed in support of an in opposition to said Motion, and
14 having entertained argument of counsel, and good cause appearing, IT IS HEREBY ORDERED
15 that Defendants’ Motion to Dismiss is DENIED.

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17 1. Florida filed its Amended Complaint on July 16, 2012, and dismissed its Sherman Act claim
18 for damages, and its FAA claim for damages. Thus, the only issue is whether Florida’s
19 remaining state law claims under the FAA and FDUTPA are barred by the applicable statutes
20 of limitations.
21
22 2. The expiration of the applicable statutes of limitations is not apparent from the face of the
23 complaint, thus Defendants are precluded from raising a statutes of limitations defense in a
24 Rule 12(b)(6) motion to dismiss. *See In re Juniper Networks, Inc. Secs. Litig.*, 542 F. Supp.
25 2d 1037, 1050 (N.D. Cal. 2008) (citing *Jablon v. Dean Witter & Co.*, 614 F.2d 677, 682 (9th
26 Cir. 1980)). In a motion to dismiss under Rule 12(b)(6), allegations of material fact are taken
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- 1 as true and construed in the light most favorable to the nonmoving party. *See Cahill v.*
 2 *Liberty Mutual Ins. Co.*, 80 F.3d 336, 337-38 (9th Cir. 1996).
- 3 3. Furthermore, Florida recognizes the doctrines of fraudulent concealment and *American Pipe*
 4 tolling. *See, e.g., Florida Department of Health & Rehabilitative Services v. S.A.P.*, 835 So.
 5 2d 1091 (Fla. 2002) (holding fraudulent concealment can suspend the statute of limitation
 6 in a tort action); *Raie v. Cheminova, Inc.*, 336 F.3d 1278, 1282 (11th Cir. 2003) (“[t]here is
 7 no dispute that *American Pipe* has been followed in Florida state courts.”).
- 8 4. On December 10, 2007, a putative class of indirect purchasers that included governmental
 9 entities (including Florida) was filed in this District. *See Juetten v. Chunghwa Picture*
 10 *Tubes, Ltd.*, Case No. 07-cv-06225-SC (N.D. Cal. filed December 10, 2007). These claims
 11 were not amended until March 16, 2009, at which point governmental entities were
 12 removed from pending class actions in this District. (Master Dkt No. 437.)
- 13 5. Even assuming that the statutes of limitations on Florida’s claims would run, absent tolling,
 14 on November 26, 2001 (four years from the filing of the first class action complaint),
 15 Florida’s governmental claims were tolled under *American Pipe* for an additional 15 months.
 16
- 17 6. Thus, Florida’s action, filed on December 9, 2011, was timely.
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19 IT IS SO ORDERED.
 20

21 DATED: _____

22 _____
 23 Hon. Charles A. Legge
 24 United States District Judge (Ret.)
 25 Special Master

26 DATED: _____

27 _____
 28 Hon. Samuel Conti
 United States District Judge